IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.318 OF 2005

Pankajkumar H. Shah .. Appellant

vs.

Ravindra R. Bhamare & Ors. .. Respondents.

Shri Sandesh Patil, Advocate for the Appellant.

Shri Rameshkumar Gite i/b. Anil Kumar Patil, Advocate for the Respondent.

CORAM : A.S.OKA, J.

DATED : 29th March, 2005.

P.C. :

1. Heard learned Counsel appearing for the Appellants and the Respondent Nos. 1 to 16. The appeal is preferred by unsuccessful Plaintiff. The challenge is to the impugned Judgment and Order passed by the lerned trial Judge by which application for temporary injunction made by the Appellant Plaintiff has been rejected. The suit filed by the Appellant/Plaintiff is for specific performance of oral agreement for sale of the suit land allegedly executed by Respondents. The existence of such oral agreement is disputed by

the Respondents.

2. The learned Judge has recorded prima facie finding that at the highest the evidence produced by the Appellant shows that two of the partiesRespondents, namely Gurunath and Pritam have accepted some amounts from the Appellants. There is prima facie finding recorded that existence of oral agreement is not estalbished by the Appellants.

3. The learned Counsel for the Appellants has placed reliance on various receipts executed by Gurunath Bhamare and Pritam Bhamare and in particular receipt dated 16.10.2001 executed by by Gurunath Bhamare. The contention of the Appellants is that the said Gurunath Bhamare was authorised by the Respondents to execute the agreement for sale. The said Gurunath is not at all a party to the suit. There are other receipts executed by the Respondent No.2 Pritam in which there is no reference at all to any agreement between the parties. The learned Counsel for the Appellants relied upon the agreement executed by

the Respondents in favour of the Appellants in respect of the adjoining lands and submitted that there was a sale transaction between the parties in respect of the suit land. The learned Counsel for the Respondents has supported the impugned judgment and order.

4. Apart from the receipt executed by Gurunath in no other documents there is a reference to any agreement of sale between the parties. One receipt executed by Respondent No.2 refers to rate fixed at Rs.111/- per sq.ft. According to the Appellants all the Respondents are the co-owners of the suit land. Gurunath, who has allegedly executed the receipts in favour of the Appellants is not party to the suit. When the Respondents executed the regular agreement in writing in respect of the other property in favour of the Appellants, if there was an agreement between the parties in respect of the suit land nothing prevented the parties from reducing the same into writing. There is nothing on record to show that apart from Respondent No.2 any other Respondent has accepted any amount from the

Appellants. The learned Trial Judge recorded the prima facie finding that existence of the suit agreement is not proved. The order passed by the trial Court is a discretionary order and unless the same is shown to be perverse it cannot be interefered with. A Substantive suit for specific performance is pending. It is, therefore, obvious that all further actions of the Respondents are subject to final result of the suit.

5. Subject to the observation made above, the Appeal is dismissed. No order as to costs.

6. All contentions of the parties in the pending suit are expressly kept open.

(A.S.Oka,J.)